

APPROVED 12-4-08

7:10 p.m. meeting opened. The Hall, 2nd Floor, Memorial Hall Library, Elm Square.

Present were: Anderson, McDonough, Batchelder, Baime, Brown

Petition No: 3805

Petitioner: Savord

Premises Affected: 243 Highland Rd

Present were: Anderson, Baime, Batchelder, McDonough, Brown

Bernard Savord represented himself in his request to remove an existing rear deck & construct a larger one that will not meet minimum front setbacks. The dwelling is located on a corner lot (Highland Rd. & Marie Dr.). Marie Drive was constructed after the house was built. The proposed setback is 27' from Marie Dr. The Board waived a site view. Brown made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. The Board then deliberated. Brown stated that the construction of Marie Drive after the house was built rendered the house non-conforming. He then made a motion to grant a special permit & to deny the variance as moot. McDonough seconded the motion & the Board voted (5-0) to grant the special permit & to deny the variance as moot. Batchelder will write the decision.

Petition No: 3806

Petitioner: Helman

Premises Affected: 106 Main St

Present were: Anderson, Baime, Batchelder, McDonough, Brown

Andrea Helman represented herself in her request to remove a condition from Decision No. 1242 which required that the 4-unit dwelling be owner-occupied. She will eventually sell the house when she retires and believes it will be more marketable without this restriction. There are several multi-family dwellings in the neighborhood, some owner-occupied, others not. Helman stated that 104 Main Street is not owner occupied, while 112 Main Street is. 104 Main Street she believes has 3 units. She was uncertain as to the number of units in 112 Main Street. Batchelder asked for the reasoning on the owner-occupancy condition. Anderson explained that it was to ensure that the property would be kept up & not fall into disrepair. Brown asked what IV.B.3 in the old by-law. No one knew. Helman informed the Board that her house was originally a single family. Anderson suggested a continuance to next month in order to research the zoning by law & asked for an extension. Batchelder made a motion to continue to the October hearing.

Anderson left the room.

Petition No: 3809

Petitioner: Cingular

Premises Affected: 119 Chandler Rd

Present were: Baime, Batchelder, McDonough, Brown

Carmen DeMarco represented the petition requesting replacement of existing antennas. She agreed to a 4-Member Board. Brown pointed out that the plans & specifications are from 1996 & requested current plans for the new antennas. Ms. DeMarco offered to draft the decision including the current specifications. McDonough asked for the number & dimension of the

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existing antennas. DeMarco stated that there are six antennas & the specifications are in the packet (antenna #7184). She pointed out that the coverage plots for AT+T for the current & proposed antennas were included, depicting a substantial change in coverage. There were no questions or comments from the public. Batchelder made a motion to close the hearing. Baime seconded the motion & the Board voted (4-0) to close the hearing. The Board waived a site view & proceeded to deliberate. Brown made a motion to grant the modifications of Decision No. 2606 to reference the proposed antenna installation. Batchelder seconded the motion & the Board voted (4-0) to grant the modification. Baime will write the decision.

Anderson re-entered the room.

Petition No: 3807

Petitioner: Maple Ave Condo Association

Premises Affected: 44 Maple Ave

Present were: Anderson, Baime, Batchelder, McDonough, Brown

David Steele, member of the Maple Ave Condo Association, represented the petition as Party Aggrieved for review of the Inspector of Building's decision to not require a permit for the importation of fill at 44 Maple Ave. Steele gave an overview of the issues: Summer 2006 no permits had been issued for the importation of fill at 44 Maple Ave. Kaija Gilmore, Inspector of Buildings, acting on his complaint, walked the property and took no action due to lack of evidence of fill activity. Steele submitted a map & photos of neighboring lots depicting the yard slopes to the Board. Steele, a 13-year resident, did not witness the importation. Neither did he see any names on trucks, nor have any photos of the fill activity. He did inform the Board that the filling took place over a one-week period, during the second week of August 2006.

Anderson asked why he waited two years to take action. Steele explained that flooding problems recently developed due to the fill. There is no engineering report estimating the amount of fill. Steele is asking for the Town's stance on the situation & for permits to be pulled for the work done. Anderson asked what purpose permits will serve. They would be useful in a future civil suit. Baime asked if he has suffered any damage. Steele explained the flooding in March '07 and the continual threat of flooding due to the fill's damning effect. He has installed a culvert, but it is ineffective. Joanne Lamoureux, 50 Maple Ave, abutter to the lower side of 44 Maple Ave explained that the run-off flows onto her property & floods. She submitted photos of the fill. Baime asked if she experienced flooding prior to 2006. She did not, but did have water in the basement & used a sump pump. Steele pointed out that both 44 + 50 Maple Ave were always damp + wet. The water now stops in his yard, for which he uses 5 sump pumps. McDonough asked Steele if he wanted the Board to order the Inspector to issue a permit. Steele confirmed this wish. Debra Day-Cummings, 67 High St., informed the Board that it is well known that fill was trucked into 43 High St + 44 Maple Ave [which abut each other to the rear] and that the wetlands & flooding in the neighborhood is historic. Doug Cummings, 67 High St, commented on the adverse impact the fill has had on the neighborhood due to flooding. Ms. Lamoureux, 50 Maple Ave, showed photos of the boundary between 44 + 50 Maple Ave, including the ditch that she wants filled to stop flooding on her property. She agreed it has always been wet behind 44 Maple Ave. Peter Judge, 36 ½ Maple Ave, informed the Board that the culvert has decreased the 12-18" of water he typically had in his basement. Kenneth Doherty, representative of Judith Baldwin – owner of 44 Maple Ave, stated that Steele illegally dug the culvert on Baldwin's

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property. Ms. Baldwin stated that she had 300 yards of fill brought in and presented truck slips to the Board. Anderson read them into the record (Pit Pipeline Co., Waltham, dated August 15, 16 & 17, 2006). The amount of fill ordered was determined by the water problem in her yard. Doherty informed the Board that Baldwin went to the Town to get a permit, but was told that up to 300 cubic yards didn't require a permit and that if the amount was greater, she should bring the slips to the Town. Doherty added that some of the fill ended up on 43 High St. Minh Hahn, owner of 43 High St, stated that he had no slips, but that the truck driver told him it was 150 yards. Doherty explained that Steele added onto his house & the new foundation caused water problems, thus prompting him to suggest to Baldwin to fill her lot. Steele also paved part of his lot, which increased run-off. 50 Maple Ave then put in a swale to decrease the flow onto her lot; Steele dug the ditch (approx. 4-5' wide by 4' deep), which is entirely on the 44 Maple Ave lot. Baldwin wants Steele to fill in the ditch. Doherty added that the map submitted by Steele is incomplete & shouldn't be relied upon as accurate. Eric Nalesky, 38 Maple Ave, informed the Board that his basement flooded from the back door prior to the culvert being dug, prior to March 2007. Steele stated that he'd fill the culvert, but a resolution of the water problem is necessary adding that his addition is on sonotubes and he paved where there was once a garage. Lamoureaux asked what recourse is available to the neighborhood. Brown read section 6.3.3 of the by law regarding earth movement incidental to construction or improvements on individual lots in single residence districts. He felt that this section didn't apply to this case, but that Section 6.3.5 regarding miscellaneous earth movement does apply. The Board discussed the lot size at 44 Maple Ave & asked Mr. Hahn how much fill was put on his lot (he estimates his lot was raised 3'). Anderson explained that the Board has to determine if the Inspector was right or wrong. The Board waived a site view McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. Anderson stated that deliberation would be at the end of the meeting.

Petition No: 3808

Petitioner: Yu

Premises Affected: 21 Candlewood Dr

Present were: Anderson, Baime, Batchelder, McDonough, Brown

Catherine Yu represented her request for a variance for a retaining wall less than 50' from a watercourse. She gave a background on the wall noting that the uphill neighbor removed some trees two years ago, which increased erosion on her lot. Conservation Commission issued a Cease & Desist instructing her to file with the ZBA. They have lost 8-12" of ground due to the increased run-off. The retaining wall is in the location of a previous fence. Yu showed the Board an aerial photograph depicting the trees that were removed, her house & the immediately surrounding area. She pointed out the location of the retaining wall. Yu stated that she has engineering from Merrimack Engineering & Caruso Landscaping. The amount of fill is less than 200 cubic yards & the wall is less than 6' high. There was some erosion prior to the neighbor's removal of trees. The Board waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Anderson commented on how the erosion is not healthy for the brook [which is part of the Fish Brook watershed] & that it has been exacerbated due to tree removal on the abutting lot. He voiced his support of the variance. Batchelder agreed. Baime made a motion to approve the variance. Batchelder seconded the motion & the Board voted (5-

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0) to grant the variance. Anderson will write the decision. He asked for a copy of the aerial photo for the record.

Petition No: 3803

Petitioner: Taylor Cove Development LLC (40B comprehensive permit application)

Premises Affected: 0 River St, 86 River St, 15R Charlotte Dr

Present were: Anderson, McDonough, Batchelder, Brown, Baime

Attorney Donald Borenstein, applicant's representative; William MacLeod, engineer; & Todd Wacome, developer, were present. Batchelder disclosed that she lives in the vicinity of the proposed project, but that she felt it would not affect her impartiality. There were no objections to her participation. Joseph Padgorski, 5 Charlotte Dr, asked who receives an abutter's notice. Anderson explained the State regulation on abutter notification. Francis Wheeler, 4 Hillcrest Rd, stated that she lives within the 300' but did not receive notice. Mike Riendeau, 74 River St., asked if the audio recording & minutes are available for the public. Anderson informed him that audio is available, but it is not part of the public record. Minutes are reviewed + approved by the Board. Riendeau asked if he could record the proceedings. There were no objections. Brown disclosed that Mrs. O'Kelly was his client three years ago. There were no objections to his participation. Borenstein asked any interested parties to put their name & address on a list he would circulate if they felt they should have been notified. Anderson informed the public that they are not required to put their name on the list, and suggested adding their e-mail address for future notification if desired. Borenstein gave an overview of the proposed project: 32 ownership units on 12 acres with 370' frontage on River Street. It is located 1 mile from Ballardvale Village, has 11 acres of uplands and 1.1 acre of wetlands on the south side. Four acres will be held for public access open space with public trailhead & parking. 9.5 acres are open space, including lawns, but excluding buildings & roads. The 3-bedroom units will be grouped 2-3 per building, 8 of which will be affordable at 80% of the Area Median Income (AMI). Each unit will have a 2-car enclosed garage and 2 ½ baths, 2085 sq. ft. of gross living area plus 620 sq. ft. for the garage. The application was filed on 7/14/08 and the IDR was held on 8/5/08. It is proposed as a 'Smart Growth Community'. MacLeod, project engineer, reviewed the 26' wide road compliance & Conservation approval. He noted that additional approval from Conservation will be necessary for some of the units and the sewer easement will have the walking trail above it. Town sewer & water will serve the site. Weinmayr + Jay Associates are the landscape architects. Anderson asked the public for their main concerns in order to plan future hearings. The concerns voiced were: traffic (vehicular + pedestrian), density, economics, wetlands, public open space, buffering, easements, lighting, noise, building setbacks, grading, water pressure, earth removal, prior denial of Victoria Place, safety, meeting local needs, 21-E report on hazardous waste, school impact, impact on wildlife, impact on property values, garage placement/driveway length and water / flooding issues in area (drainage). Anderson asked Borenstein for a contribution to conduct a traffic peer review. Borenstein agreed. Anderson will work with the administrative secretary on the traffic peer review. Borenstein will submit a traffic study & get peer review for next meeting. Anderson asked the applicant to meet with the neighborhood for a working session on traffic. The next meeting will be on October 21, 2008 at 7 p.m. (Location to be determined). Arthur Barber, Sparta Way resident & School Committee member, stated that he wouldn't be able to attend the 10.21 meeting due to the School Committee meeting. Anderson agreed to set aside time at another

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meeting for the Schools. For the next meeting: receive traffic report, hire traffic consultant, developer meets with neighbors. Brown made a motion to authorize the Chair to retain a traffic consultant. McDonough seconded the motion & the Board voted (5-0) to authorize the Chair to retain a traffic consultant. McDonough made a motion to continue the public hearing until 10.21.08 at 7 p.m. Baime seconded the motion & the Board voted (5-0) to continue to 10.21.08.

Petition No: 3807

Petitioner: Maple Ave Condo Association

Premises Affected: 44 Maple Ave

Present were: Anderson, Baime, Batchelder, McDonough, Brown

This Board proceeded to deliberate this case. Anderson reminded the Board that a permit is not required for less than 300 cubic yards & they have receipts for approximately 300 cubic yards, part of which is on 43 High St. Brown commented that they have no specific evidence to determine the amount of fill brought in & there isn't enough evidence to say the Inspector is wrong. Anderson agreed, adding that several people made it worse, suggesting it may be the Board's responsibility to require evidence to mitigate. Anderson suggested overturning the Inspector's decision to require both property owners (44 Maple Ave + 43 High St) to get a permit and asking her to take another closer look at the problem, get scientific information, & if necessary, issue a permit, or send them to the Board. McDonough made a motion to remand to the Building Inspector for review whether a permit is necessary. Batchelder seconded the motion & the Board voted (5-0) to remand it to the Building Inspector. Brown will write the decision.

Brown made a motion to approve the minutes of 2/7/08, 3/6/08, & 4/3/08. Batchelder seconded the motion & the Board approved the minutes.

The meeting adjourned at 11:01 p.m.